UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,195	06/13/2001	Kelvin Brian Dickinson	J3544(C)	6049

201 7590 05/21/2002

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER
GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
1616	5

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/880,195	DICKINSON ET AL.	
	Examiner	Art Unit	
	Sharmila S. Gollamudi	1616	

-- The MAILING DATE of this communication appears on the cover she t with th correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 June 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims 1-7 are included in the prosecution of this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 6 recites the broad recitation " weight ratio ranges from 95:5 to 5:95", and the claim also recites "preferably 90:10 to

10:90, most preferably from 80:20 to 20:80" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 3, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawasaki et al (5556970).

Kawasaki et al teach hair oil formula containing castor oil (33%) and liquid paraffin (33%).

Claims 1, 3-4, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (5116607).

Jones teaches a hair dressing composition containing light petrolatum, light mineral oil, castor oil, olive oil, coconut oil, sesame oil, and almond oil, among other oils. The oils are in instant amounts (Note claim 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2289219 by itself or in view of applicant's statements.

GB teaches a hair growth formula containing petroleum (3-5%), sesame oil (3-5%), castor oil (9-13%), and mineral oil (30-40%) among other components.

GB does not teach the use of instant oils in claim 2. Further, CB does not teach all the instant ranges. The reference teaches that sesame oil contains vitamin E, which is a beneficial nutrient that helps promote growth of hair cells. Castor oil and mineral oil are taught to accelerate the penetration of the nutrients through the skin. (Note page 4).

Applicant in the specification, page 3 discloses that specific examples of vegetable derived glyceride fatty esters are castor oil, sesame oil, and instantly claimed oil.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any vegetable oil that contained glyceride fatty esters with the expectation of similar results since the active principle is the glyceride fatty esters and the applicant's statement teaches that castor and sesame oil contain glyceride fatty esters.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to manipulate the amounts of oils in the composition since GB provides the general guidance and routine optimization is not considered inventive.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vernon (4999187).

Vernon teaches a hair treatment composition containing 60-70% petrolatum, 0.5-10% coconut oil, 0.5-15% mineral oil, and 0.25-5% almond oil, among other components. (Note col. 2, lines 13-30 and claim 1).

Vernon does not provide a specific example.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to manipulate the amount of oil taught by Vernon since Vernon teaches ranges that are suitable and will treat the hair and scalp.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawasaki et al (5556970) by itself or in view of applicant's statement.

Kawasaki et al teach hair oil formula containing castor oil (33%) and liquid paraffin (33%).

Kawasaki does not teach the use of instant oils in claim 2. Further, the reference does not specify whether the paraffin is light.

Applicant in the specification, page 3 discloses that specific examples of vegetable derived glyceride fatty esters are castor oil, sesame oil, and instantly claimed oil.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any vegetable oil that contained glyceride fatty esters with the expectation of similar results since the active principle is the glyceride fatty esters and the applicant's statement teaches that castor contains glyceride fatty esters.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5116607) by itself or in view of applicant's statement.

Jones teaches a hair dressing composition containing light petrolatum, light mineral oil, castor oil, olive oil, coconut oil, sesame oil, and almond oil, among other oils

Jones does not teach the instant oils of instant claim 2.

Applicant in the specification, page 3 discloses that specific examples of vegetable derived glyceride fatty esters are castor oil, sesame oil, and instantly claimed oil.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any oil that contained glyceride fatty esters with the expectation of similar results since the active principle is the glyceride fatty esters and the applicant's statement teaches several oil such as animal and vegetable oils contain glyceride fatty esters.

Conclusion

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG
May 13, 2002

JOSE' G. DEES
SUPERVISORY PATENT EXAMINER

1616